

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT Z-995625-D1
AND ALL OTHER SEAMAN'S DOCUMENTS

Issued to: Eubanks C. HILL

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1775

Eubanks C. HILL

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 13 March 1969, an Examiner of the United States Coast Guard at Portsmouth, Va., suspended Appellant's seaman's documents for twelve months upon finding him guilty of misconduct. The specifications found proved allege that while serving as chief cook on board SS AMERICAN LANCER under authority of the document above captioned, Appellant:

- (1), (2), (3), and (4) was absent from the vessel and his duties without authority on 9, 10, 17, and 18 January 1969 at Hamburg, Germany;
- (5) on 18, January 1969, at Hamburg, Germany, failed to obey an order of the chief officer to remain aboard the vessel;
- (6) on 29 January 1969 absented himself from duties without authority at Rotterdam, Holland;
- (7) & (8) was absent from the vessel and duties on 30 and 31 January 1969 at London, England;
- (9) on 1 February 1969, at Le Havre, France, failed to perform duties because of intoxication; and
- (10) on 3 February 1969, also at Le Havre, was absent from duties without authority.

At the hearing, Appellant elected to act as his own counsel. Appellant entered a plea of guilty to the charge and each specification. The Examiner later changed all these pleas to "not guilty."

The Investigating Officer introduced in evidence voyage records of AMERICAN LANCER and the testimony of the master.

In defense, Appellant offered in evidence his own testimony.

At the end of the hearing, the Examiner rendered a written decision in which he concluded that the charge and specifications had been proved. The Examiner then entered an order suspending all documents issued to Appellant for a period of twelve months.

The entire decision was served on 17 March 1969. Appeal was timely filed on 30 March 1969. Although Appellant had until 19 May 1969 to add to his original grounds for appeal he has not done so.

FINDINGS OF FACT

On all dates in question, Appellant was serving as chief cook on board SS AMERICAN LANCER and acting under authority of his document. On each date in question, at the time and place specified, Appellant performed, or failed to perform, the acts found proved by the Examiner, as set out above.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that Appellant was ill on 17 and 18 January 1969.

Since Appellant raised the same defense at the hearing, the appeal is construed as urging that the Examiner's findings are not based on substantial evidence.

It is also contended that the record shows that the master had not been informed on 2 February 1969 that Appellant had a fever of ninety nine degrees. This is construed in the same fashion as the offense of 1 February 1969.

In this appeal, then, Appellant challenges only the findings on the third, fourth, and ninth specifications.

APPEARANCE: Appellant, pro se.

OPINION

I

There was official log entries to support each one of Appellant's ten offenses, in addition to the master's testimony. It is true that as to the offenses of 17 and 18 January 1969 Appellant, when called before the master, said , first, "I was sick-that's all," and second, "I was still sick."

The log entries, however, made in accordance with statute, constituted prima facie proof of the facts recited. The mere fact of Appellant's claim to have been ill does not disturb this effect. At hearing, Appellant repeated his claim to have been ill. The Examiner was not persuaded.

One reason why the Examiner was not persuaded is that in Appellant's testimony he claimed to have suffered from drugging in the same bar at Hamburg as excuse for all four failures to perform in Hamburg. It was obviously not unreasonable for the Examiner to reject this testimony as to two of the occasions, especially in view of the bewildering confusion of excuses offered at hearing for the other offenses and in view of Appellant's testimony that he had a history of being drugged at bars while serving on other ships. Further, as to the offense of 18 January 1969 there was the additional evidence that Appellant had deliberately left the ship after an order from the chief officer to remain aboard. This was inconsistent with a later claim of illness and was ample reason for the Examiner to reject Appellant's excuses.

However, the fact remains that the test to be applied here is not whether another person might have accepted Appellant's excuse but whether the evidence, apart from Appellant's excuse was substantial. There was substantial evidence to support the Examiner's findings and they will not be disturbed.

II

As to Appellant's second point, that the transcript shows that no one informed the master on 2 February 1969 that Appellant had had a ninety nine degree fever, the contention is correct. Under cross-examination, the master admitted that no one had told him that Appellant had claimed to have had such a "fever." Whether such a body temperature would constitute a "fever" in any medical sense, there is no evidence whatsoever that such was Appellant's temperature.

This contention must be rejected. The Examiner's findings are based on substantial evidence.

ORDER

The order of the Examiner dated at Portsmouth, Va., on 13 March 1969, is AFFIRMED.

W. J. SMITH
Admiral, U. S. Coast Guard
Commandant

Signed at Washington, D. C., this 26th day of June 1969.

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